HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM : Hon'ble Shri H.L.Dattu, Chief Justice &
Hon'ble Shri V.K.Shrivastava, Judge

Writ Petition No.3063 of 2003

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

HON'BLE SHRI V.K. SHRIVASTAVA, J.

Sd/-
V.K.Shrivastava
Judge

POST FOR PRONOUNCEMENT
OF THE ORDER : 03/04/2007

Sd/-
Chief Justice

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : **HON'BLE SHRI H.L. DATTU, CJ.**
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition No.3063 of 2003

PETITIONERS

1. Vijay Kumar Soni, S/o Shri Rangnath Soni, aged about 49 years, Occupation Service, presently working as Clerk in Sewa Sahakari Samiti Maryadit, Maungeli, Tahsil Mungeli, Distt. Bilaspur (C.G.)
2. Durga Prasad Soni, S/o Shri Mohan Lal Soni, aged about 47 years, Occupation Service, presently working as Clerk in Sewa Sahakari Samiti Maryadit, Birkona District Bilaspur (Chhattisgarh)
3. Vinod Kumar Sharma, S/o Saheb Lal Sharma, aged 48 years, Occupation Service , presently working as Clerk in Sewa Sahakari Samiti Maryadit, Hardi, District Bilaspur (Chhattisgarh)
4. Om Prakash Dwivedi, S/o Ramkumar Dwivedi, aged 46 years, Occupation Service, presently working as Sales Man, Sewa Sahakari Samiti Maryadit, Loharsi (Sone), District Bilaspur (C.G.)
5. Nand Kumar Sharma, S/o Krishna Sharma, aged about 49 years, Occupation Service, presently working as Sales Man, Sewa Sahakari samiti Maryadit, Meiu, District Bilaspur (Chhattisgarh)

Versus

RESPONDENTS

1. State of Chhattisgarh, thru' Department of Agriculture, Co-operative, Diary and Fishery, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
2. The Registrar, Co-operative Societies, Chhattisgarh, Raipur (Chhattisgarh)
3. Bilaspur Zila Sahakari Kendriya Bank Maryadit, thru' Its Chief Executive Officer, Bilaspur (Chhattisgarh)

Present: Shri Manindra Shrivastava, Senior Advocate with Shri D.Patel, counsel for the petitioners.
Shri Prashant Mishra, Additional Advocate General for the State/respondents No.1 and 2.
Shri S.L.Kurmi, counsel for respondent No.3.

ORDER

(Passed on 03rd April, 2007)

The following order of the Court was passed by

H.L. Dattu, C.J.

The petitioners in this writ petition are the employees of various Primary Co-operative Societies (for short 'the Societies'). They have filed this writ petition under Articles 226 and 227 of the Constitution of India *inter alia* requesting this Court to issue a writ in the nature of certiorari to quash the eligibility criteria of fixation of age for the purpose of promotion to the post of Samiti Prabandhak as amended in sub-rule (7) of Rule 24 of the Chhattisgarh Zila Sahakari Kendriya Bank Karmachari Seva (Niyojan, Nibandhan Tatha Unki Karya Sthiti) Niyam, 1982 (for short 'the Rules, 1982') by declaring the same as illegal, unconscionable and violative of Articles 14 and 16 of the Constitution of India. Consequential relief sought in the writ petition is to direct the respondents to consider the case of the petitioners as fully eligible for being considered for promotion to the post of Samiti Prabandhak.

(2) The first three petitioners are working as Clerks in the Sewa Sahakari Samiti Maryadit and the other two petitioners are working as Salesman in the Sewa Sahakari Samiti Maryadit.

(3) The Sewa Sahakari Samiti Maryadit is a Resources Society or Primary Society. The Society is constituted as a body corporate under Section 31 of the Chhattisgarh Co-operative Societies Act, 1960 (for short 'the Act'). Under Section 10 of the Act the societies are classified into different types of societies. They are 13 in number. Sub-section (1-a) of Section 10 of the Act further permits the Registrar to classify the societies falling under the heads specified in Section 10(1) of the Act as Apex Society, Central Society, Primary Society. The petitioners in this writ petition are working in Primary Societies.

(4) The Registrar of the Co-operative Societies in exercise of his power under Section 55 of the Act had framed their rules in the year 982 and the same were notified on 15-06-1982. Under the aforesaid rules the posts of Samiti Prabandhak were to be filled in by direct recruitment. The rules would apply for direct recruitment of Samiti Prabandhak in the Central ociety for the reason that the post of Samiti Prabandhak is not available in a Pr iary Society. The said Rule reads as under :

वर्ग	पदोन्नति द्वारा	सीध	भर्ती द्वारा
1–बैंक संवर्ग कर्मचारी (अ) समिति प्रबन्धक "ब" वर्ग	–	श	प्रतिशत
(ब) समिति प्रबन्धक, "अ" वर्ग	"ब" वर्ग के समिति प्रबन्धकों से शत प्रतिशत		–
(स) प्रबन्धक, आदिम जाति सेवा सहकारी संस्थाएं	60 प्रतिशत वर्ग "अ" समिति प्रबन्धकों में से	40	तिशत
(द) प्रबन्धक विकासखण्ड स्तरीय आदिम जाति सेवा सहकारी संस्थाएं तथा कृषक सेवा सहकारी संस्थाएं	प्रबन्धकों तथा वर्ग 3 में से शत प्रतिशत		-
2–बैंक कर्मचारी (अ) वर्ग–4	10 प्रतिशत वर्ग–5 के कर्मचारियों में से	90	तिशत
(ब) वर्ग–3 1–पर्यवेक्षक 2–शेष पदों हेतु	वर्ग–"अ" समिति सेवकों में से वर्ग–4 में से शत प्रतिशत शत प्रतिशत		
(स) वर्ग–2	वर्ग–3 तथा प्रबन्धकों में से शत प्रतिशत		
नोट–1. विकास खण्ड स्तरीय आदिम जाति सेवा सहकारी संस्थाओं तथा क सेवा सहकारी संस्थाओं में कार्यरत प्रबन्धकों को पदोन्नति कारणों के फ स्वरूप यदि पद का वेतनमान कम हो तो पुराने वेतनमान लेने का विकल्प होगा । 2. बैंक कर्मचारी वर्ग–2 में पदोन्नति के लिए बैंक कर्मचारी वर्ग – 3 वं प्रबन्धकों की एक संयुक्त पद कम सूची उनकी वरिष्ठता के आधा पर तैयार ....."			

(5) After promulgation of the aforesaid rules, the employees of t Primary Societies had represented to the Registrar of the Co-operative So ties that

they do not have any promotional avenues in the Primary Society and, therefore, some provision requires to be made for creating promo onal avenues in the Primary Society.

(6) Keeping in view the representation so made and also k ping in view that the employees of the Primary Societies had no avenue by way of promotion to the next promotional post, the Registrar, Co-opera ve Societies has amended the rule which has come into effect from 03-04-19 2, providing 50% of the posts of Samiti Prabandhak in the District Central Co-operative Bank (Central Society) shall be filled up direct recruitment and t e remaining 50% shall be filled up by promotion through selection purely made on the basis of merit after written examination. The amended rule has come i o existence with effect from 03-04-1992. The said rule reads as under :-

S.No.	Class	By Promotion	By direct cruitment
(a)	1/ Bank Cadre Officer Society Manager	50% posts from amongst Assistant Society Manager/Salesman working in all the Primary Agricultural Credit Cooperative societies in the District and who possesses necessary educational qualification, has put in five years satisfactory service, is not more than 45 years of age and against whom charges of misappropriate, forgery, corruption and other serious irregularities have not been leveled. The selection shall be made on the basis of merit after a written examination.	5 % by direct cruitment

(7) The said amended rule is questioned by the petitioners and their learned Senior Counsel Shri Manindra Shrivastava inter alia contend g that the same is irrational, arbitrary and has no reasonable nexus with the ob ct sought to be achieved. It is further stated that it is discriminatory on the grou d that the eligibility criteria of less than 45 years of age is fixed only in the c se of the persons working in the Primary Societies and not in the case of mployees working in the Central Society. In aid of his submission, learned c nsel has relied upon certain observations made by the Apex Court in th case of

Indravadan H. Shah vs. State of Gujarat and another, reporte in **1986 (Supp) SCC 254.**

(8) The respondents have filed their return before this Court and that they have stated in detail the object and purpose of the amendment whic has been brought in the rules by fixing 45 years as age criterion for consi ration of promotion of the employees working in the Primary Societies to t post of Samiti Prabandhak. Shri Prashant Mishra, learned Additional Advocate General appearing for the State would submit that the expression omotion' used in the amended rule is misnomer and it is an appointment way of promotion to the employees working in a Primary Society. Learne counsel would submit that keeping in view the object and the purpose of the mended provision, it cannot be said that the said provision is either arbitrary o rrational or has no nexus with the purpose and object sought to be achieved b the said amendment.

(9) The question that falls for consideration of this Court is wheth fixation of the age of 45 years by the amended rule is either irrational or arb ary or in violation of the constitutional provisions.

(10) The Chhattisgarh Cooperative Societies Act, 1960 has come to force with effect from 12-05-1961. In the dictionary clause of the Act the m aning of expression of 'Primary Society, Central Society and Apex Society' i defined. Apex Society means a society whose principal object is to provide fa lities for the operation of other societies affiliated to it and whose area of peration extends to the whole State of Chhattisgarh. The Central Society means a District Cooperative Agriculture and Rural Development Bank or y other society, whose area of operation is confined to a part of the State a d which has, as its object the promotion of the objects of the member soc ies and which has at least five societies as its members. The Central Co perative Bank means a resource society registered or deemed to be registe d under

the Act, which is either licensed under the Banking Regulation Act, 1949 or permitted by the Reserve Bank of India to do banking business t so licensed, and has area of operation confined to part of the State, and ha its principal object, the creation of funds and obtaining credit, goods or se ces for and providing credit, goods or services as loan to Cooperative Societi affiliated to it for agriculture, industrial and other allied purposes. Primary So ety means a society which is neither an Apex Society nor a Central Society. The Officer means a person elected or appointed by a society according to bye-laws to any office of such society and includes a Chairman, Vice-Chairm , President, Vice-President, Managing Director, Manager, Secretary, Treasure Member of the Committee and any other person elected or appointed unde his Act, the rules or the bye-laws to give directions in regard to the busi ss of such society.

(11) Section 10 of the Act authorises the Registrar of the Societ s to classify all the societies in the State under one or more heads of the ciety which includes Consumer's Society, Farming Society etc. Further, unde sub-section (1-a) of Section 10 of the Act , the Registrar is authorised to classify the societies falling under any of the heads specified in sub-section of Section 10 of the Act. The Registrar is authorised to classify the societies entioned in sub-section (1) as Apex Society, Central Society and Primary Soci .

(12) Chapter IV of the Act provides for duties, privileges, prope and funds of societies and under the aforesaid heading, Section 31 of the Act finds a place. It speaks of societies to be bodies corporate. The aid section envisages that the Registrar of a society shall register it a body cor orate by the name under which it is registered having perpetual succession ar a common seal, and with power to hold property, enter into contracts, institut and defend suits and other legal proceedings and to do all things neces ary for the purposes for which it was constituted.

(13) Section 55 of the Act empowers the Registrar of a Soci / to determine the terms and conditions of employment in a society. The said provision authorises the Registrar to frame rules governing the terms a conditions of employment in a society or class of societies and the soci y or class of societies to which such terms and conditions of employment re applicable, shall comply with the order that would be issued by the Registra n that behalf.

(14) The Registrar of the Societies in exercise of his power under Section 55 of the Act has framed rules in the year 1982. The said rule p vided that the post of Samiti Prabandhak shall be filled by 100% direct recruit ent. The said rule is now amended with effect from 03-04-1992. The ost of Samiti Prabandhak (Society Manager) is now filled up by 50% direct cruitment and the remaining 50% from among the Assistant Society Mar ger/Salesman working in all the Primary Agriculture Credit Cooperative Societi in the District and who possesses the necessary educational qualification a has put in 5 years of satisfactory service and is not more than 45 years of a e and against whom charges of misappropriation, forgery, corruption and other serious irregularities have not been leveled. The selection should be ade purely on the basis of merit after a written examination. It is the fixatic of age of 45 years in the amended rule which has come into force w n effect from 03-04-1992 is questioned by the petitioners who are the emplo es working in the Primary Societies. As we have already noticed that the ost of Samiti Prabandhak or Society Manager is not available in the Primary ocieties. The said posts are available only in the Central Society. Since a rep sentation was made by the members working in the Primary Societies that t y do not have any promotional avenues, the Registrar of the Societies has ought it fit to amend the earlier rule which was promulgated on 15-06-1982 / providing an opportunity to the employees working in the Primary Societies participate in the selection process to the post of Samiti Prabandhak or Sales Manager which post was to be filled up by the direct recruitment.

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(15) Shri Manindra Shrivastava, learned Senior Counsel ap earing for the petitioners would primarily contend that the fixation of 45 years a age criterion is arbitrary, irrational and has no nexus with the object sought be achieved and, therefore, violative of Article 16 of the Constitution. Learne counsel has elaborately argued the aforesaid issue before us at the time of he ing.

(16) Shri Prashant Mishra, learned Additional Advocate Gen al appearing for the respondents/State would submit that the expression 'pron tion' used in the amended provision is only a method of recruitment for appo ment to the post of Samiti Prabandhak (Sales Manager). Insofar as the purpo e and object sought to be achieved by the State, learned counsel would submit hat it is only to provide a promotional avenue to the Clerks, Salesman a Assistant Managers working in the Primary Societies to participate in e selection process to the post of Samiti Prabandhak/Sales Manager in the Ce tral Society and, therefore, has nexus with the object sought to be achi ed by the impugned amendment.

(17) It is now well settled law by a catena of decisions rendered the Apex Court that public employment can be by way of direct recruitm t which is normally called as external source of recruitment or by way of omotions, appointment by transfers and appointment by absorption, which a normally known as internal sources of recruitment. External source of a ointment would comprise all eligible persons who are not already in ser ce in the organization to which recruitment is to be made. Sometimes, these andidates are known as candidates from the open market. In the case of rec itment by internal sources, it would comprise those who are already in ser ce in the organization to which recruitment is to be made. The recruitment y way of promotion is done with a view to provide incentives and generate ef iency. It is now well settled that it is fully within the competence of the e ployer to decide as a matter of policy, the source from which the personnel re uired for manning the services are to be drawn. The recruitment rules ma provide

eligibility criteria such as, educational qualifications, age limit, exp ience etc. The recruitment rules may also provide that certain categories posts are required to be filled by promotion from lower posts. But, as balancing exercise to ensure fresh employment opportunities these rules or orms more often than not also provide for recruitment to these categories al by direct recruitment from open market. When this dual course is adopted, is said the recruitment is from two sources, i.e., either by promotion or abso ition or on transfer and direct recruitment of persons from outside the service When two sources of recruitment are involved, the rules must also fix quot specifying what percentage of the total recruitment is to be reserved for e ch source. When a person is so recruited by promotion, strictly speaking it is n a case of promotion according to the normal significance. It is a ca of fresh appointment to service and prescription of the promotional avenu s nothing, but the prescription of eligibility criteria for recruitment.

(18) In the instant case, as we have noticed earlier, the petitione before the Court are all the persons working in the Primary Societies, as such ney do not have any promotional avenues. In order to give them an incenti , the rule-making authority has thought it fit to give them an appointment to he post of Samiti Prabandhak. While doing so, the rule-making authority h s fixed 45 years as the age limit. The prescription of such an age limit i within the domain of the employer. It is also now well settled that the rul or norms should provide a minimum or maximum age for appointment.

(19) In our view, the prescription of age limit for appointment by omotion to the post of Samiti Prabandhak cannot be characterized either as rbitrary or irrational or it has no nexus with the object sought to be achieved o n violation of the Constitutional provisions.

(20) In view of the above discussion, we see no merit in th contention canvassed by learned counsel appearing for the petitioners. Acc dingly, the

petition requires to be rejected and it is rejected. In the facts and circumstances of the case, the parties shall bear their respective costs. Ordered accordingly.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge